

### REMARKS

This is in response to the Office Action dated April 6, 2005. A petition for a one-month extension of time and requisite fee is included herewith. The claims in the case are claims 14-19 and 22-26. The Office Action has withdrawn all previous grounds of rejection.

Claims 14 and 24 have been amended to eliminate ionic and nonionic surfactants from the list of ingredients that may optionally be included in the composition.

#### 35 U.S.C. §102(b)

The Office Action presents new rejections of claims 14-18 and 22 under 35 U.S.C. §102(b) as anticipated by PCT Publication WO 90/00184 to Datcoop ("Datcoop"). The Office Action alleges that Datcoop teaches a thermoplastic composition comprising either rubber waste or leather fibers with a tenside surfactant. A tenside is another term for wetting agent or surfactant. The only part of the Applicants' claimed invention that corresponds to a tenside surfactant is the anionic or nonionic surfactant. Therefore, without conceding the correctness of the Examiner's rejection, Applicants amend claims 14 to eliminate the terms ionic and nonionic surfactants. As Datcoop requires a tenside surfactant (see abstract) and the invention as instantly claimed do not include a tenside surfactant, claims 14-18 and 22 are not anticipated by Datcoop. Withdrawal of the rejection is respectfully requested.

The Office Action also rejects claims 14-17 and 19 under 35 U.S.C. §102(b) as anticipated by Patent Publication DE 2917478B to Battelle ("Battelle"). Battelle is alleged to teach a composite material comprising a styrene-butadiene rubber having an open cell porous structure, a non-porous coating of the same elastomer and containing up to 20% by weight of leather fibers. Applicants disagree with the Office Action's interpretation of the teachings of Battelle.

First, the abstract of Battelle refers to a styrene-butadiene *rubber*. It is well-known to those of skill in the art of macromolecular chemistry that the term "rubber" refers to natural as well as synthetic thermoset materials, not to thermoplastic materials (as claimed in the present application). We invite the Examiner's attention to the definition shown for "rubber" in Hawley's CONDENSED CHEMICAL DICTIONARY 10<sup>TH</sup> EDITION, Van Nostrand Reinhold Co., New York, 1981 (a copy is provided for the Examiner's convenience):

**Rubber.** Any of a number of natural or synthetic high polymers having unique properties of deformation (elongation or yield under stress) and elastic recovery after vulcanization (q.v.) with sulfur or other cross-linking agent, which in effect changes the polymer from thermoplastic to thermosetting.”

Thus, “rubber” refers to materials that have such properties *after vulcanization* which makes them thermoset rather than thermoplastic. Further evidence is from the text at column 3, line 3:

Die erfindungsgemäßen Einlagen werden hergestellt indem eine härtbare Gießmasse enthaltend ein Elastomer wie Polyurethan, Silikonkautschuk oder Styrol-Butadien-Kautschuk, sowie geringe Mengen eines geeigneten Katalysators, 0,5 bis 20 Gew.-%, vorzugsweise unter 15 Gew.-%, eines faserförmigen Füllstoffs und 30 bis 70 Gew.-%, vorzugsweise 40 bis 60 Gew.-%, eines leichtlöslichen anorganischen Sazes auf eine geeignete Form gestrichen, ausgehärtet und anschließend das anorganische Salz herausgelöst wird.

Translated on a freely available internet translator program which may be found on [http://www.worldlingo.com/en/products\\_services/worldlingo\\_translator.html](http://www.worldlingo.com/en/products_services/worldlingo_translator.html), The passage translates to:

The inserts according to invention manufactured by a hardenable casting mass containing an elastomer such as polyurethane, Silicone rubber or styrene butadiene india rubber, as well as small quantities of a suitable catalyst, 0.5 to 20 wt%, preferably under 15 wt%, a fibrous filler and 30 to 70 wt%, preferably 40 to 60 wt%, a easy-soluble inorganic salt painted on a suitable form, is hardened and afterwards the inorganic salt is extracted.

(Note: “faserförmigen” and “Gew.-%” did not translate, however it is apparent from the English abstract that these terms mean “fibrous” and wt% respectively).

It is apparent from the description in Battelle that corresponding materials are prepared from starting materials that are capable of being hardened. One of skill in the art would understand that the rubber materials disclosed in Battelle do not fulfill an essential feature of the claimed invention: the thermoplastic behavior of the materials of the present invention. Withdrawal of the rejection is respectfully requested.

**35 U.S.C. §102(b)**

The Office Action also rejects claim 23 over Datcoop in view of U.S. Patent No. 5,958,554 to Addie *et al.* ("Addie").

As discussed above, claim 14 has been amended to exclude tensides from the claimed composition. Thus, the claimed composition is distinguished from that taught by Datcoop. Further nothing in Addie cures the fundamental deficiency of the Datcoop reference in view of the amendments made herein. The references alone or in combination do not teach or suggest making a composition without tensides, and to do so would teach away from Datcoop which requires tensides as an essential ingredient. Withdrawal of the rejection of claim 23 is respectfully urged.

The Office Action also rejects claim 24 over Datcoop in view of Addie and further in view of U.S. Patent No. 4,350,782 to Kuchler *et al.* ("Kuchler").

Like claim 14, claim 24 has also been amended to exclude tensides from the claimed process. Thus, the claimed process is distinguished from that taught by Datcoop in view of Addie and further in view of Kuchler. That is, the claimed process makes a material that is fundamentally different from that taught by Datcoop as discussed above. Further nothing in Addie or Kuchler cures the fundamental deficiency of the Datcoop reference in view of the amendments made herein. The references alone or in combination do not teach or suggest a process for making a composition without tensides, and to do so would teach away from Datcoop which requires tensides as an essential ingredient. Withdrawal of the rejection of claim 24 is respectfully urged.

Finally, the Office Action also rejects claims 25-26 over Datcoop in view of Japanese Patent No. JP406049417A to Toyota ("Toyota").

As discussed above, claim 14 has been amended to exclude tensides from the claimed composition. Thus, the claimed composition is distinguished from that taught by Datcoop. Further nothing in Toyota cures the fundamental deficiency of the Datcoop reference in view of the amendments made herein. That is, the hypothetical combination of Datcoop with Toyota would only arrive at a Datcoop composition formed by the Toyota article forming method which bonds leather to a backing material. As the Datcoop composition and the claimed composition are clearly distinguished and the references (alone, or in combination) do not teach or suggest making a composition without tensides, and to do so would teach

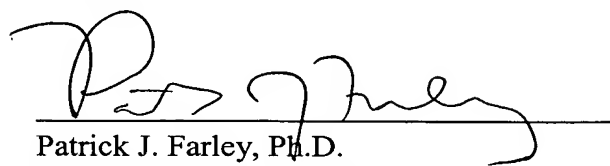
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away from Datcoop which requires tensides as an essential ingredient, claims 25-26 are not obvious over Datcoop in view of Toyota. Withdrawal of the rejection of claims 25 and 26 is respectfully urged.

The Applicants earnestly submit that the claims are in condition for allowance, which action is respectfully requested.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Patrick J. Farley", is written over a horizontal line.

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